

INDIANA JUDICIAL NOMINATING COMMISSION
INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS

Fiscal Year 2006-2007

Meg Babcock, Counsel

The Indiana Judicial Nominating Commission and the Indiana Commission on Judicial Qualifications are established by Article VII, Section 9, of the Indiana Constitution. The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of both Commissions. The other six members, who serve three-year terms, are three lawyers elected by other lawyers in their districts and three non-lawyers appointed by the Governor. In addition to the Chief Justice, the elected and appointed Commission members are Stephen L. Williams, Esq., Terre Haute; Joan M. Hurley, Sellersburg; James H. Young, Esq., Indianapolis; Mark Lubbers, Indianapolis; Sherrill Wm. Colvin, Esq., Fort Wayne; and Dr. Daryl R. Yost, Fort Wayne. James O. McDonald, Esq., Terre Haute, Derrel E. Zellers, Tell City, and Payton Wells, Indianapolis, also served during the fiscal year. The Nominating Commission met on seven occasions, and the Qualifications Commission met five times during the fiscal year.

Although comprised of the same members, the two Commissions perform distinct functions within the judiciary. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. On December 13, 2006, the Commission selected the Honorable Randall T. Shepard to serve a fifth 5-year term as Chief Justice beginning March 4, 2007.

The Nominating Commission also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. It selects three nominees for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. On May 11, 2007, after interviewing twenty candidates for appointment to the Court of Appeals, the Commission nominated the Honorable Cale J. Bradford, Marion Superior Court, the Honorable William J. Hughes, Hamilton Superior Court, and

the Honorable Robyn L. Moberly, Marion Superior Court, to succeed retiring Judge Patrick D. Sullivan. On June 22, 2007, Governor Daniels appointed the Honorable Cale J. Bradford to the Court of Appeals, Second District.

The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads. During fiscal year 2006-2007, the Nominating Commission certified 15 new Senior Judges and recertified 79 Senior Judges. No Senior Judge applications were rejected during this fiscal year.

The Qualifications Commission investigates allegations of ethical misconduct brought against Indiana judges, judicial officers, and candidates for judicial office. Periodically, the Commission privately cautions judges who have committed relatively minor or inadvertent violations of the Code of Judicial Conduct. In the most serious cases, the Qualifications Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Qualifications Commission and its staff provide judges and judicial candidates with advice about their ethical obligations, and Commission counsel responded to several hundred requests for advice during the fiscal year.

The Qualifications Commission considered 371 complaints alleging judicial misconduct during fiscal year 2006-2007. It dismissed 208 complaints summarily because they did not raise valid issues of judicial misconduct and instead were complaints about the outcomes of cases or otherwise were outside the Commission's jurisdiction. Another 124 were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Examples of complaints dismissed because they did not establish ethical misconduct include a claim that the judge neglected his judicial duties by appointing a Guardian Ad Litem, an allegation that the judge denied a disqualification motion filed because the judge presided over another case involving the same litigant, and a complaint that the judge engaged in an improper *ex parte* communication when, prior to an *in camera* interview with a young child, the mother told the judge the child was frightened.

Of the remaining 39 cases on the Qualifications Commission's docket, the Commission requested the judges' responses to the allegations, and conducted inquiries or investigations. Of those, 13 complaints were dismissed after the Qualifications Commission concluded the judges had not violated the Code of Judicial Conduct. The Qualifications Commission privately cautioned 13 other judges for deviations from their ethical obligations. The Qualifications Commission's decision to caution a judge rather than proceed to formal, public charges depends upon the seriousness of the violation, the judge's acknowledgement of the violation, whether or not the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances. The subjects of the thirteen cautions, in order of frequency, related to delayed rulings (5), *ex parte* contacts (3), deviations from precedent or court rules (3), misuse of the court's power (2), improper campaign conduct (1), inattention to court administration (1), allowing the appearance of partiality (1), nepotism and favoritism (1), and failure to disqualify (1). (Some cautions related to more than one violation.)

During the fiscal year, the Supreme Court resolved three public disciplinary cases filed by the Commission. In *In re Cruz*, 851 N.E.2d 960 (Ind. 2006), the Court accepted the Commission's and the judge's conditional agreement to a Public Reprimand for operating a vehicle while intoxicated. In *In re Newman*, 858 N.E.2d 632 (Ind. 2006), the Court accepted a conditional agreement and issued a Public Reprimand of the judge for neglecting to issue an order for a defendant's release from prison. And, in *In re Hanley*, 867 N.E.2d 157 (Ind. 2007), the Court issued a Public Reprimand after the Commission and the judge filed a conditional agreement stipulating that the judge operated a vehicle while intoxicated. Nine inquiries or investigations were pending at the conclusion of the fiscal year.

The Nominating Commission and Qualifications Commission are staffed by the Division of State Court Administration with a full-time attorney, a part-time staff attorney, and an administrative assistant. A more detailed report about the Commission and its members and activities may be found at www.IN.gov/judiciary/jud-qual.